

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SAI KIM,

Plaintiff,

- against -

HILTON HOTELS CORPORATION,
HILTON GARDEN INN, INC.

Defendants
-----X

'07 CIV 4696

ANSWER

JUDGE CASTEL

Defendants HILTON HOTELS CORPORATION and HILTON GARDEN INN, INC., a non-entity, by their attorneys Herzfeld & Rubin, P.C. as and for their Answer to plaintiff's Complaint, respectfully state:

FIRST: Deny each and every allegation contained in the paragraphs of the Complaint designated "1," "2", "3", "8" and "15".

SECOND: Deny each and every allegation contained in the paragraphs of the Complaint designated "4" and "5", and leave all questions of law to this Honorable Court.

THIRD: Deny that they have any knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Complaint designated "6", "9", "10", "11", "12", "13", "14", "16", "17" and "18".

FOURTH: Deny that they have any knowledge or information sufficient to form a belief as to the allegations contained in the paragraph of the Complaint designated "7", except that they admit that HILTON HOTELS CORPORATION is a Delaware corporation with its principal place of business in California.

AS TO THE FIRST CAUSE OF ACTION

FIFTH: Repeat, reiterate and re-allege each and every of the forgoing allegations, denials and admissions made to the paragraphs of the Complaint referred to in the paragraph of the Complaint designated "19", with the same force and effect as if set forth more fully herein at length.

SIXTH: Deny that they have any knowledge or information sufficient to form a belief as to the allegations contained in the paragraph of the Complaint designated "20" except that they admit that defendants met all duties and responsibilities required of them under the law.

SEVENTH: Deny each and every allegation contained in the paragraphs of the complaint designated "21", "22", "23" and "24".

AS TO THE SECOND CAUSE OF ACTION

EIGHTH: Repeat, reiterate and re-allege each and every of the forgoing allegations, denials and admissions made to the paragraphs of the Complaint referred to in the paragraph of the Complaint designated "25", with the same force and effect as if set forth more fully herein at length.

NINTH: Deny each and every allegation contained in the paragraphs of the Complaint designated "26" and "27".

AS TO THE THIRD CAUSE OF ACTION

TENTH: Repeat, reiterate and re-allege each and every of the forgoing allegations, denials and admissions made to the paragraphs of the Complaint referred to in the paragraph of the Complaint designated "28", with the same force and effect as if set forth more fully herein at length.

ELEVENTH: Deny each and every allegation contained in the paragraph of the Complaint designated "29".

TWELFTH: Deny that they have any knowledge or information sufficient to form a belief as to the allegations contained in the paragraph of the Complaint designated "30".

AS TO THE FOURTH CAUSE OF ACTION

THIRTEENTH: Repeat, reiterate and re-allege each and every of the forgoing allegations, denials and admissions made to the paragraphs of the Complaint referred to in the paragraph of the Complaint designated "31", with the same force and effect as set forth more fully herein at length.

FOURTEENTH: Deny each and every allegation contained in the paragraphs of the Complaint designated "32", "33", "34" and "35".

FIFTEENTH: Deny that they have any knowledge or information sufficient to form a belief as to the allegations contained in the paragraph of the Complaint designated "36".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

SIXTEENTH: Upon information and belief, this court lacks jurisdiction over the person of defendants HILTON HOTELS CORPORATION and HILTON GARDEN INN, INC.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

SEVENTEENTH: The venue of this action is improper, and the case should be transferred to the United States District Court for Ohio.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

EIGHTEENTH: The Complaint fails to state a claim against defendants upon which relief can be granted

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

NINETEENTH: Upon information and belief, plaintiff has failed to join a necessary party or parties whom, upon information and belief, owned and operated the premises where the subject incident is alleged to have occurred.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

TWENTIETH: Upon information and belief, the injuries and damages sustained by the plaintiff, if any, which are specifically denied, were caused in whole or in part by her own culpable conduct, negligence and fault and were not caused or contributed to by reason of any negligence, fault or want of care on the part of the defendants HILTON HOTELS CORPORATION and HILTON GARDEN INN, INC.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

TWENTY-FIRST: Upon information and belief, the plaintiff assumed the risk of any and all injuries sustained by her.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

TWENTY-SECOND: The damages sustained by plaintiff, if any, which are specifically denied, resulted wholly and solely from the fault, neglect, want of care, negligence, culpable conduct or act(s) of the plaintiff or of parties other than HILTON HOTEL CORPORATION and HILTON GARDEN INN, INC. for whose act(s) said defendants are not liable or responsible.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

TWENTY-THIRD: Upon information and belief, all or part of the costs and expenses constituting plaintiff's damages, if any, which are specifically denied by defendants, will be replaced or indemnified by a collateral source in reduction, mitigation and/or diminution of any damages allegedly sustained by plaintiff.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

TWENTY-FOURTH: Upon information and belief, this Court lacks subject matter jurisdiction over this action.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE


TWENTY-FIFTH: This case should be transferred to the United States District Court for Ohio based upon forum non conveniens.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

TWENTY-SIXTH: This case should be decided in accordance with the laws of Ohio.

WHEREFORE, defendants HILTON HOTELS CORPORATION and HILTON GARDEN INN, INC. demand judgment dismissing plaintiff's Complaint together with costs, disbursements and counsel fees.

Dated: New York, New York
June 1, 2007

Herzfeld & Rubin, P.C.
By: 
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HILTON HOTELS
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TO:

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